

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
October 16, 2014**

Approved 11/13/2014

Minutes

The Meeting of the Town of Kinderhook Planning Board was held on Thursday, October 16, 2014, beginning at 7:05pm at the Kinderhook Town Hall, 3211 Church Street, Valatie, NY. The meeting was called to order by the Chairwoman, Mary Keegan-Cavagnaro. The Roll was taken by the Secretary.

A. Roll Call

Present:

Mary Keegan-Cavagnaro, Chairwoman
Andy Howard, Town Attorney
Patrick Prendergast, Engineer
Peter Haemmerlein
Chris Simonsen
William Butcher (arrived 7:10pm)
Jake Samascott
Dale Berlin
Jason Graham
Guy Rivenburgh
Daniel Weiller
Nataly Dee, Secretary

Excused:

None

Absent:

None

B. Correspondence

1. Review of Minutes:

July 10, 2014 – Workshop
July 17, 2014 – Meeting
August 14, 2014 – Workshop
August 21, 2014 – Meeting
September 11, 2014 – Workshop
September 18, 2014 – Meeting

Approval of the minutes was tabled.

C. Public Hearings

1. Drs. NancyAnn Quimby and David Picchione - 4, 6, 8 Maple Lane, Valatie – Site Plan Review;

The notice as it appeared in the newspaper of record on October 4, 2014, was read by the secretary.

A motion to open the Public Hearing was made by Mr. Simonsen, Motion seconded by Mr. Haemmerlein. All in favor. Motion carried; hearing opened.

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Dr. Picchione addressed the board and reviewed the proposal. They would like to purchase the property, maintain the current use and add doctors' offices. He stated that the renovations would be cosmetic updates and minor changes, specifically to be ADA compliant. There no footprint changes proposed and no variances required. Modifications to the plans indicating directions of ingress and egress were made as requested by the board.

The public was invited addressed the board and applicant. Mr. Ed Simonsen addressed the board. He requested to see the exterior plans of the building. They were reviewed. Mr. Picchione stated that the building needs to be raised slightly and leveled out. Ramps will be installed on the exterior of the building. Additional elevations were shown and discussed. Mr. Simonsen stated that the applicant has done an admirable job.

A motion to close the public hearing was made by Mr. Chris Simonsen. Motion seconded by Mr. Haemmerlein. All in favor. Motion carried; hearing closed.

Parking allocated to disabled individuals was addressed. Currently, there are two spaces allocated and no change to that is proposed. Ms. Keegan-Cavagnaro stated that those spaces will have to have signs and not just be striped on the blacktop. The proposed lighting was addressed and the cut sheet provided by the applicant was reviewed by the engineer. Dumpster size and location was discussed. Mr. Picchione noted that the dumpster would be small and would be located on the west side of the building.

The State Environmental Quality Review (SEQR) was reviewed by the Attorney:
Part II: Impact Assessment of the EAF (Short Environmental Assessment Form).

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? *Proposed answer is no or small impact.*
2. Will the proposed action result in a change in the use or intensity of use of land? *Proposed answer is no or small impact as there is no change to the footprint.*
3. Will the proposed action impair the character or quality of the existing community? *Proposed answer is no or small impact.*
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? *Proposed answer is no.*
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? *Proposed answer is no or small impact.*
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? *Proposed answer is no or small impact. Not expanding the building.*
7. Will the proposed action impact existing:
 - a. public / private water supplies? *Proposed answer is no or small impact.*
 - b. public / private wastewater treatment? *Proposed answer is no or small impact.*
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? *Proposed answer is no or small impact.*
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, water bodies, groundwater, air quality, flora and fauna)? *Proposed answer is no or small impact.*

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10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? *Proposed answer is no or small impact.*

11. Will the proposed action create a hazard to environmental resources or human health? *Proposed answer is no or small impact.*

A motion to issue a negative declaration was made by Mr. Simonsen. Motion seconded by Mr. Butcher. All in favor. Motion carried; declaration issued.

Mr. Howard addressed the issue of referral to county planning. The County Planning Board has not yet met this month. He offered that the board could issue conditional approval based on favorable determination or no impact to county from the County Planning Board.

A motion that the application is substantially complete and ready for conditional approval based on a favorable recommendation, or no impact, from the County Planning Board; and, that handicapped signs be installed in the parking lot at such time as the construction is complete was made by Mr. Samascott. Motion seconded by Mr. Haemmerlein. All in favor. Motion carried; application conditionally approved.

The applicant submitted fees in the amount of \$350.

D. Old Business

1. Robert & Maryanne Broderick/Lawrence & Patricia Cavagnaro, 3 Rose Street, Niverville – Minor Subdivision;

Ms. Keegan-Cavagnaro recused herself from the proceedings. Mr. Haemmerlein took the helm as Vice-Chair. Mr. Lawrence Cavagnaro addressed the board and distributed revised plans. They have received ZBA approval for the Area Variance. The parameters of the project were reviewed. It was noted that the proposed location of the house and septic area have been swapped. Mr. Prendergast inquired about the soils. Mr. Cavagnaro indicated that it is good gravel, excellent soil. Highway Department approval for a curb cut was submitted. Meeting is scheduled with Health Department for their review and approval.

Board comments. Mr. Rivenburgh inquired whether it would be possible to make the November workshop a voting meeting. The board discussed this possibility and was of the opinion that it would not set a precedent.

A motion to make the November 13, 2014, workshop meeting a full voting meeting was made by Mr. Butcher. Motion seconded by Mr. Berlin. All in favor. Motion carried; voting meeting scheduled.

A motion to set the Public Hearing for this application on Thursday, November 13, 2014 at 7:05 pm was made by Mr. Butcher. Motion seconded by Mr. Samascott. All in favor. Motion carried; hearing set.

Ms. Keegan-Cavagnaro rejoined the board.

2. Tim Sullivan, 84 Ottoville Road, Niverville – Minor Subdivision;

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This project has been referred to the ZBA. Mr. Howard reported that there is no new information on this project. The applicant is finalizing the survey.

3. Napa Auto Parts, Route 9 – Site Plan Review for Additional Building;

There was no one in attendance to represent this application.

4. Valatie Rescue Squad – Minor Subdivision/Lot Line Adjustment;

Mr. Derick LaTorre, President of the Valatie Rescue Squad, addressed the Board and distributed plans. There is still a question about the setbacks.

Mr. Howard addressed the history of the properties. In reviewing minutes of the previous subdivision of the property in 2004, he was reminded that he represented the applicant, Merry Hill. He was of the opinion that there is no conflict of interest. Mr. Howard stated that the minutes reflect a concern of the neighbors regarding drainage. However, there is no reference in the minutes to the setbacks. Further, he noted that the current applicant is obligated to meet the current state of the code. In the absence of some engineering concern or a concern of the board regarding the setback issue, they are permitted to ask for a lot line adjustment with a building setback in accordance with the current state of the code. If there was something in the minutes that indicated there was some reason for that then that form a basis for the board to continue that. However, there is no reference to that. Certainly, with regard to the drainage swale to the north that was a concern and it should remain one. The approved subdivision plans were reviewed with specific attention paid to the notes on the plans. Mr. Simonsen commented that perhaps the setbacks had something to do with the driveway. Mr. Prendergast recalled that Mr. Buono had ideas about how to deal with the conservation of land and that perhaps he was attempting to conserve a strip of land to meet the requirements. The notes on the plans reflect that a front setback of 150' shall be maintained. There is no reference in the minutes specifically to a conservation subdivision. There is one lot that has been sold and developed. They purchased the property under those conditions. Mr. Howard offered that if the board wanted to take a conservative approach, they could request that the applicant could seek approval from that property owner stating that they have no objection to modifying the setbacks. Then all four lot owners would be in consent to modify the setbacks. The board has some discretion. The question for the applicant is the 150' setback significant to what they want to do. Mr. LaTorre stated that it is hard to know at this time, and that is why they would rather not have it. They will attempt to contact the owner to seek that approval, however, that may prove difficult given the owners' situation.

Mr. Simonsen inquired about the current curb cut location and approval. Mr. LaTorre stated that they do not know yet where the building site would be so the driveway location may change in the future. Mr. Simonsen was of the opinion that the current curb cut location is not well situated. Suitability of the site would be part of the review. When they are ready to build, the applicant would have to return to the board for Site Plan Review. They would need more than a building permit. Zoning is not part of the review, but it is thought to be a permitted use.

A motion to set the Public Hearing for this application on Thursday, November 13, 2014 at 7:15pm was made by Mr. Berlin. Motion seconded by Mr. Samascott. All in favor. Motion carried; hearing set.

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E. New Business

None.

F. ZBA Opinions

None.

G. Liaisons

1. Village Planning Boards: Nothing to report.
2. Town Board: Meets Monday, November 20.
3. NYSEG Project: Nothing new to report.

Corrections were noted to the minutes under review for approval.

The board engaged in a discussion regarding the draft of the proposed Local Law 1. The proposed changes were reviewed, recommendations were noted, and discussion of the issues ensued. Comments included, but were not limited to the following:

Amend 250-19. Home Occupation

A. Customary Home Occupation.

(4) Permitted Home Occupation:

Mr. Simonsen: Currently, we have a list of permitted occupancies. The proposed law has none listed. Is he to understand that what is to be permitted is strictly what's on the use table, 251, Chart 1?

Mr. Howard: There is not a list, and the rationale is that if there is a list and an applicant proposes a use not on the list, then the law has to be changed again.

Mr. Simonsen: Clarified that in essence nothing is prohibited.

Mr. Howard: That is correct, subject to the other requirements.

Mr. Simonsen: There are limits. Everything has to take place inside a structure.

Mr. Howard: Inside, non-noxious.

Mr. Simonsen: Troubled with Section 4, seems very subjective. Who decides what is clear and convincing evidence? What standard is used?

Mr. Berlin: Left open for the discretion of the board. The list was rather rigid; this leaves it more open to interpretation.

Mr. Simonsen: Concerned about subjectivity and continuity between boards over time.

Mr. Howard: The clear and convincing standard was specifically provided there, you have various standards. There is beyond preponderance, which is the normal standard in a civil action. This is more likely higher than that. This is just below more than beyond a reasonable doubt.

(b) Environmental impacts.

Mr. Simonsen: Currently the code makes reference to hazardous materials. You cannot possess them as part of a home occupation. That prohibition has been removed. This language should be restored. It is of serious concern. Examples were provided of potential hazardous materials involved in potential home occupations. Gun smithing was used as an example.

(c) Traffic.

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Mr. Simonsen: Currently, limited to 8 trips per day. That prohibition has been lifted as well. What is expected traffic? It is questionable.

Mr. Howard: You are going to analyze the volume of traffic typically generated by the home occupation and the traffic that would otherwise be generated by a typical resident. You would also take into consideration the type and condition of road.

Amend 250-20 Off Street Parking

Some regulations remain the same, some changes have been made. For commercial use the regulation has gone from 1 space for every 1,000 square foot of floor area to 1 space to every 2,000 square foot of area. What is the impact on smaller businesses? Parking for day care centers was also discussed in regard to high volume times for drop-off and pick-up. A lane designated to those times was proposed.

Amend 250-30 Accessory apartment dwelling unit.

Mr. Simonsen: If you had the situation where there is a home occupation and an accessory apartment, you could quickly get up to a lot of spaces. No zoning restrictions under proposal.

Mr. Butcher: The assumption is that an accessory apartment then it is going onto a property that a dwelling already exists. It would be possible for that to be grandfathered in even in an industrially zoned area.

Mr. Howard: If you had a residential structure in an industrial zone they would be permitted to have an accessory apartment.

Mr. Simonsen: Currently, it is restricted to RC, AR, R2. Currently, you can't have an accessory apartment in a Hamlet; under the proposed law, you could. He is considering all of the potential impacts of the proposed changes. Currently, required to re-permit every two years; that would be removed.

Amend 250-33(H)

Mr. Simonsen: Regarding roof pitch. The word "incapable" is questionable.

Add 250-39 Private Road Specifications

(B) Should read, "minimum **right of way** width".

(F) A maximum number of **10** parcels. Last sentence was eliminated.

(G) Grades were modified to align with the current code, 215-17(D)(2).

(K) Should sight distances be included? Should reference be made to sections of the code that deal with that? Add, "Adequate sight distances must be demonstrated at intersections."

Further discussion about hazardous materials ensued.

Mr. Howard: If an applicant came in for Site Plan Review, the board would do a SEQR. An applicant would have to demonstrate and show to the board: a. what they're going to do; and b. do they have the mechanism to handle it. If the board felt that it was too dangerous and the mitigating measures they take, the scope and scale, are not sufficient, the board could prevent them from doing it.

Mr. Weiller: The board would have the option to permit the use of hazardous materials in the home occupation, if they so chose.

Mr. Simonsen: There are a lot of potential problems with that. Having that section as it is written raises a red flag.

Mr. Samascott: A homeowner now is not prohibited from having hazardous materials at their house.

Mr. Simonsen: If you are doing it as a business, there's a volume. People don't think about dumping things on the ground. If it gets in the ground, you're not going to get it out. You have to be careful with this stuff.

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Ms. Keegan-Cavagnaro: Reiterated that SEQR review would still be conducted which covers the health and safety of the community. Environmental impacts of a business that are before the board for a site plan are regulated by other state and federal agencies. They have to be approved. There's reporting on that and licenses on that.

Mr. Howard read the section as it currently exists in the code and the proposed revisions. Store, use, produce or dispose is not included in the proposal.

Ms. Keegan-Cavagnaro: How do you store something that's hazardous if it's part of the business when it's regulated by other entities?

Mr. Rivenburgh: What mechanism do we have in play right now that we monitor whether they have hazardous stuff there now? It is in the code that they can't have it, but we're not operating under any mechanism to control it. So what is the value of it being there?

Mr. Samascott: Provided a list of common household hazardous materials (oven cleaner, drain cleaner, batteries, mercury thermometers, fluorescent light bulbs) and stated that if you eliminate all hazardous materials that might eliminate all business. Who's defining hazardous materials if we don't know what it is?

Mr. Weiller: Can the attorney think of an example where this would be applicable? Notably gun smithing, and the board was supportive of that applicant. He was aware of what issues he might encounter in this regard.

Mr. Simonsen: Asked him specifically about refinishing. He said he was not doing it.

Mr. Haemmerlein: If this were changed, and he came in again, would you ask him the same question?

Mr. Simonsen: Yes, I would.

Mr. Rivenburgh: Is it possible that the codes committee drafted some of these things because we are bumping up on so many of these home occupations? Specifically noting beauty salons.

Mr. Graham: They are also regulated by other agencies.

Mr. Simonsen: The discussion should be limited to this section which makes reference to hazardous materials, we are talking about these permitted uses: dress-making, musician, photographer, engineer, architect, lawyer, real estate, insurance, accounting. Is there any need for any of those people to have anything hazardous? Other than maybe window cleaner. When this section gets applied, it gets applied to this list. There is a limit here as to what any of these people could justifiably use in pursuit of their occupation.

Mr. Howard: Offered proposed language: "No home occupation shall use, store, produce or dispose of any unregulated hazardous material."

Mr. Simonsen: We are talking about these occupations occurring not in a business or industrial zone, but in a residential neighborhood. You've got a house right next door. If you set your house on fire, you could burn your neighbors' house down.

Mr. Graham: They still have to follow the procedures. That could happen with anything.

Mr. Simonsen: When you start playing with this stuff, you increase the likelihood of having something like that happening. That's why some of the stuff is considered hazardous. If somebody were to engage in that behavior in an industrial area where there is not much around the impact to the surrounding neighborhood is going to be minimal. In a residential neighborhood, that is not the case. That's why this stuff is restricted, to reduce that hazard. It comes back to one of our primary concerns here, and that is safety.

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Ms. Keegan-Cavagnaro: I think safety is on everyone's mind. Nobody is trying to be reckless. You can't protect everybody from everything. We have to do our best and we have to be able to allow people to live and to engage in home occupations which I think is a good thing for the town.

Mr. Weiller: I think the attorney has proposed a good compromise or at least a good way to address it. The concept of unregulated. Obviously, there are a lot of substances out there and most of them are regulated at some level or other. What we're not considering is potentially substances that don't exist yet.

Ms. Keegan-Cavagnaro: Number 11 of the SEQR form asks the question, "Will the proposed action create a hazard to the environmental resources or human health?" There's your way to address that.

Mr. Simonsen: That's a pretty broad question.

Ms. Keegan-Cavagnaro: That's a good thing. SEQR also asks if the proposed action requires a permit, or approval, or funding from any other governmental agency? Many businesses require other agencies to be involved. I think as far as a business friendly community that we are all looking at, I think putting that language in there is just another form of restricting when we already have it in a state required form plus other areas that will cover anything that comes up like that.

Mr. Weiller: Has there been an instance where someone was not able to proceed with a home occupation because of what the code currently says about hazardous materials?

Ms. Keegan-Cavagnaro: The only two home occupations the board has seen recently are hair salon and gun smithing.

A vote about the language to include in the recommendation regarding hazardous materials was taken. There were 5 votes in favor of the proposed language which does not make mention of hazardous materials.

The revisions were reviewed and the attorney will re-draft the recommendation as per the discussion.

A motion to make a positive recommendation to the Town Board to adopt the Local Law 1 as re-drafted was made by Mr. Graham. Motion seconded by Mr. Haemmerlein. He vote was as follows:

In Favor

Ms. Keegan-Cavagnaro
Mr. Haemmerlein
Mr. Samascott
Mr. Berlin
Mr. Graham

Opposed

Mr. Simonsen
Mr. Butcher

Abstained

None

Motion carried; positive recommendation will be forwarded to the Town Board.

H. Other

1. Public Comment

Mr. Ed Simonsen addressed the board. He did not agree with the recommendation regarding the exclusion of hazardous materials. We have to send the message that there are certain substances you

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don't play with. We can't control what people do on their own, but we can give the message to the general public that there are certain regulated substances that we shouldn't have in our homes. He also did not agree with the size increase of allowable home occupations. With respect to design standards, diminishing design standards doesn't benefit the town. He appreciated the board's deliberation of all of the issues. He encouraged people to take advantage of the available training opportunities.

Ms. Keegan-Cavagnaro also thanked the board members for their work and appreciates their dedication.

A motion to adjourn the meeting at 9:51pm was made by Mr. Simonsen. Motion seconded by Mr. Berlin. All in favor. Motion carried; meeting adjourned.

Respectfully Submitted,

Nataly Dee, Secretary